

# Energy Policy and European Union Politics

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# Energy Policy and European Union Politics

Anna Herranz-Surrallés, Department of Political Science, Maastricht University

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## Summary

Energy policy has been considered as a “special case of Europeanization,” due to its tardy and patchy development as a domain of EU activity as well as its important but highly contested external dimension. Divergent energy pathways across Member States and the sensitivity of this policy domain have militated against a unified European Energy Policy. And yet, since the mid-2000s cooperation in this policy area has picked up speed, leading to the adoption of the Energy Union, presented by the European Commission as the most ambitious energy initiative since the European Coal and Steel Community. This dynamism has attracted growing scholarly attention, seeking to determine whether, why and how European Energy Policy has consolidated against all odds during a particularly critical moment for European integration. The underlying question that emerges in this context is whether the Energy Union represents a step forward towards a more homogenous and joined-up energy policy or, rather a strategy to manage heterogeneity through greater flexibility and differentiated integration. Given the multilevel and multisectoral characteristics of energy policy, answering these questions requires a three-fold analysis of (1) the degree of centralization of European Energy Policy (*vertical integration*), (2) the coherence between energy sub-sectors (*cross-sectoral integration*), and (3) the territorial extension of the energy acquis beyond the EU Member States (*horizontal integration*). Taken together, the Energy Union has catalyzed integration on the three dimensions. First, EU institutions are formally involved in almost every aspect of energy policy, including sensitive areas such as ensuring energy supplies. Second, the Energy Union, with its new governance regulation, brings under one policy framework energy sub-sectors that had developed in silos. And finally, energy policy is the only sector that has generated a multilateral process dedicated to the integration of non-members into the EU energy market. However, this integrationist dynamic has also been accompanied by an increase in internal and external differentiation. Although structural forms of differentiation based on sectoral opt-outs and enhanced cooperation have been averted, European Energy Policy is an example of so-called “micro-differentiation,” characterized by flexible implementation, soft governance and tailor-made exemptions and derogations.

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**Keywords:** energy policy, Energy Union, differentiated integration, integration theory, external energy policy, internal energy market, Energy Union governance, Energy Community, gas infrastructure, Brexit, European Union politics

Energy policy has long been considered as a “special case of Europeanization” (Andersen, 2000). This “specialness” concerns several dimensions of European integration, which have been the main focal points of political debate and scholarly research in this area (see Table 1). To begin with, European Energy Policy (EEP) has followed an unusual trajectory of so-called *vertical integration*, namely the pace and degree to which EU Member States have delegated powers to the EU institutions. The sensitivity of this policy domain, with its links to security, welfare or industrial policy, together with the very different energy mixes across Member States, have made this sector particularly resistant to European integration. In fact, energy policy did not emerge as an area of EU activity by design, but as the result of separate actions in related areas of EU competence, such as environmental or competition policy (Solorio & Morata, 2012). Discussions on a common energy policy only picked up speed in the mid-2000s, leading up to its formalization in the Treaty of Lisbon in 2009 and culminating a decade later with the launch of the *Energy Union* as one of the flagship initiatives of the Juncker Commission (2014–2019). This dispersed origin and late blossoming has therefore made energy policy an interesting test case for classical integration theories, concerned with when, why and how Member States decide (not) to delegate competences to EU institutions.

A second particularity of energy policy is its multidimensionality, and hence a high demand for *cross-sectoral integration*. Energy policy as such is a “mega-issue” (Lessage, Graaf, & Westphal, 2010, p. 3) in the sense that it is not a clearly demarcated policy but an issue that cuts across several sectors and levels of governance (Goldthau & Sovacool, 2012, p. 232; and see the article “Energy Policy”). This cross-sectoral character is particularly pronounced in a multilevel polity like the EU, where energy policy encompasses a broad range of areas, including economic, environmental, security, and social policies, governed by different policy frameworks and levels of EU competence (Tosun, Biesenbender, & Schulze, 2015, p. 5). Added to this institutional dispersion is the fact that the main goals of the EEP, typically defined as sustainability, competitiveness and security of supply, are often in conflict (Eberlein, 2012, p. 151; Helm, 2014). The analysis of the interactions, and multiple trade-offs, between the different strands of energy policy has therefore been another crucial concern for both scholars and practitioners. With the launch of the Energy Union, conceived as an instrument to provide longer-term policy coherence between energy and climate policies, the question of whether the EU is developing a joined-up approach has gained further centrality.

Finally, energy policy is also special in its geographical extension, or what has been termed as *horizontal integration* (Leuffen, Rittberger, & Schimmelfennig, 2012, pp. 11ff). Due to the EU’s high level of dependency on foreign energy supplies and the global character of energy-related challenges such as climate change, the EEP has gradually developed a strong external dimension. Quite remarkably, energy is an area where EU international leadership ambitions preceded its own internal policy. For example, in the early 1990s, long before putting in place the first stones of the internal energy market, the EU sponsored the first-ever international treaty on energy trade and investments, the Energy Charter Treaty (Herranz-Surrallés, 2016a, pp. 51ff). Likewise, the EU was one of the main driving forces of the Kyoto Protocol in the 1990s, before having established its own decarbonization instruments (see the article “Climate Policy in European Union Politics” for more details). Energy is also the only area that has generated a multilateral process for the sectoral integration of neighboring countries into the EU’s regulatory space—the Energy Community launched in 2005. Therefore, an important

strand of research on the EEP is also interested in what kind of external policies has the EU been pursuing and to what extent and why non-EU countries adopt the European energy acquis.

**Table 1. Main Dimensions of Research on European Energy Policy**

| Integration Dimensions   | Main Research Questions   |
|--|---|
| <i>Vertical integration</i> (degree of centralization of EU energy policy)     | <ul style="list-style-type: none"> <li>• To what extent has energy policy become Europeanized?</li> <li>• Why has energy policy gradually consolidated despite strong resistance?</li> <li>• What form of governance is the Energy Union?</li> </ul>                                      |
| <i>Cross-sectoral integration</i> (coherence between energy policy subsectors) | <ul style="list-style-type: none"> <li>• What have been the main energy priorities driving EU energy policy?</li> <li>• How does the EU juggle the trade-offs between energy-related objectives?</li> <li>• To what extent is the Energy Union providing a joined-up approach?</li> </ul> |
| <i>Horizontal integration</i> (territorial extension of EU energy acquis)      | <ul style="list-style-type: none"> <li>• (How) does the EU try to influence energy governance outside its territory?</li> <li>• When/why do non-EU countries adopt the EU energy acquis?</li> <li>• What forms of energy integration could be sought for post-Brexit UK?</li> </ul>       |

Source: Author's own elaboration.

In sum, despite its seemingly technical nature, developments and tensions in EEP encapsulate core theoretical and practical debates regarding the different paths and *finalité* of European integration. On the one hand, the idea of an Energy *Union* casts a vision of “an integrated continent-wide energy system” (European Commission, 2015, p. 2) and ties in with the founding goals of “creating an ever-closer union among the peoples of Europe” enshrined in the EU Treaties (Crisan & Kuhn, 2017, p. 173). On the other, the EEP has been characterized by patchy integration and lack of coherence between its different subsectors, uneven implementation across Member States and neighboring countries and abundant conflicts of authority (Andersen & Sitter, 2015; Herranz-Surrallés, Solorio, & Fairbrass, 2018; Szulecki, Fischer, Gullberg, & Sartor, 2016). On that account, EEP resembles more a system of *differentiated* integration, meaning a policy area with “an organizational and member state core but with a level of centralization and territorial extension that vary by function” (Leuffen et al., 2012, p. 10). By reviewing the main developments and scholarly debates on each of the

three above-mentioned dimensions of integration (vertical, cross-sectoral, and horizontal), this article aims to contribute to the discussion of how united or differentiated is European Energy Policy growing.

## Vertical Integration: Explaining the (Ambiguous) Rise of EU Authority in Energy Policy

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Following a recent measurement of the level of vertical integration across all EU policy areas (Leuffen et al., 2012, p. 20), energy policy appears to be the one having experienced the biggest integrationist jump over the past decade, from a score of 2.0 to 4.0 (where the maximum level of integration is 5.0). Since the Lisbon Treaty, energy policy has indeed joined the category of most integrated policy areas, where the ordinary legislative procedure (OLP) applies. However, article 194 of the TFEU on energy policy is a careful balancing act between EU-level policy-making and the preservation of national sovereignty. As established in the much-quoted article 194.2 of the TFEU, EU-level energy policy “shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.” Therefore, the extent of coordination and integration of energy policy at EU level is not that much a matter of formal competence, but the result of a constant tug-of-war between the Commission (and generally also the Parliament) and shifting majorities in the Council depending on the topic. This section examines how scholars and experts have assessed and explained this gradual but ambiguous increase in vertical integration.

Given the composite character of energy policy, assessing the *degree of EU authority* in energy policy is a difficult undertaking, since the policy dynamics, and arguably also the potential for integration, differs across subsectors (cf. Buchan, 2009, p. 14). The overview presented here is therefore far from exhaustive and concentrates on some aspects of energy policy to illustrate some of the main theoretical points in the literature. As sketched in Table 2, vertical integration differs widely not only across the main subsectors of EEP (internal market, sustainability, and security of supply) but also within them. On the least integrated end, we find areas closely related to the energy mix and the choice of energy suppliers. For example, there are no common EU targets on energy dependency or on diversification, just broad orientations in documents such as the European Energy Security Strategy (European Commission, 2014), and some EU-level support measures for strategic diversification projects (Herranz-Surrallés, 2016b).

On the other end of the spectrum, certain areas appear closer to centralized decision-making, for example, the Emissions Trading System (ETS), a carbon market with an EU-wide cap on emissions in which the Commission plays a central role, for example by reducing surplus emissions allowances (Wettestad et al., 2012). Also, in certain technical aspects of the internal energy market, there is a high degree of EU authority, for example in the approval of network codes. In that case, the third energy package mandates the European Network of Transmission System Operators for Electricity (ENTSO-E) to draft the binding network codes, with the guidance of the EU Agency for Cooperation of Energy Regulators (ACER), to be later adopted in comitology, with the scrutiny of Parliament and Council (Jevnaker, 2015). In security of supply, the only domain where the EU has acquired high authority is in the special

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area of nuclear safety, where the EU counts with harmonized safety standards and, following the Fukushima nuclear accident, also a new system of reporting that grants powers to the Commission to directly inspect operating reactors (Schubert, Pollak, & Kreutler, 2016, p. 31).

In the middle, we find areas where there is legislation with concrete obligations, such as the liberalization of the internal energy market, in which national authorities retain a high level of discretion. This is for example the case of the liberalization of the gas market, where Member States can still choose between different models of unbundling and where national regulators can largely decide on exemptions and derogations (Andersen & Sitter, 2015). The same applies to renewable energy policy, which according to some authors, has even experienced a “de-Europeanization” trend (Solorio & Bocquillon, 2017), given that in 2014 Member States decided to replace the 2020 binding national targets with an EU-wide target only for 2030. The overall picture is therefore one of “incomplete vertical delegation” (Eberlein, 2012, p. 157) and considerable “parallel authority” between the EU and Member States even in core areas of the Single Market (Andersen & Sitter, 2015, p. 330).

**Table 2. Overview of Vertical Integration of European Energy Policy (Non-Exhaustive)**

|                        | <b>Sub-Areas</b>                           | <b>Score*</b> | <b>Legal Bindingness</b>   | <b>Role of Institutions</b>  |
|------------------------|--|---------------|--|--|
| <b>Internal Market</b> | <i>Energy taxes</i>                        | –             | No legislation   | Advisory role by the Commission  |
|                        | <i>Energy subsidies</i>                    | +             | Recent obligation to open capacity mechanisms and support schemes to generators from another MS        | Potential independent action by the Commission on state aid  |
|                        | <i>Liberalization</i>                      | +             | Directives on liberalization, but high flexibility (e.g. MS can choose different models of unbundling) | Potential independent action by the Commission on competition inquiries                                    |
|                        | <i>Infrastructure and interconnections</i> | +             | Indicative interconnection target, criteria for funding eligibility                                    | Commission allocates funding through implementing acts   |
|                        | <i>Harmonization of network standards</i>  | ++            | Binding network codes  | ACER/ENTSO-E drafts the codes, Commission approves in comitology   |
| <b>Sustainability</b>  | <i>Energy Efficiency</i>                   | –             | Non-binding EU target, but binding reporting   | Commission monitors and can adapt legislation (via delegated acts) in case EU indicative target is not met |
|                        | <i>Renewable Energy</i>                    | +             | Post-2020, binding target only at EU level, binding reporting  | Commission monitors and proposes correction  |

|                           | Sub-Areas                                    | Score* | Legal Bindingness                                       | Role of Institutions  |
|---------------------------|--|--------|---|---|
|                           |  |        |   | mechanisms should EU target not be met                                      |
|                           | <i>Emissions Trading System</i>              | ++     | EU-wide harmonized market, centralized auctioning       | Commission designs and implements   |
| <b>Security of supply</b> | <i>Dependency reduction</i>                  | –      | No common goals   | Advisory role by the Commission   |
|                           | <i>Diversification of external suppliers</i> | –      | General orientation in non-binding strategy             | Commission and EEAS contribute to energy diplomacy                          |
|                           | <i>Inter-governmental agreements (IGAs)</i>  | +      | Binding obligation for MS to report IGAs                | Commission may participate in IGA negotiations as observer at request of MS |
|                           | <i>Supply crisis response</i>                | +      | Binding obligation to design regional emergency plans   | Intervention in case of lack of agreement for emergency supplies            |
|                           | <i>Nuclear Safety</i>                        | ++     | Binding EU-wide safety standards, mandatory peer review | Commission monitors compliance  |

Source: Author's own elaboration.

\* Note: Score is indicative of the sum of degree of legal bindingness and harmonization, and involvement of institutions at EU-level.



Moving towards the *explanations* of this ambiguous but nonetheless significant increase of vertical integration, developments in energy policy have to some extent been crisis-driven (Tosun et al., 2015). For example, the energy crises of 1970s and early 1980s marked the start of EU coordination in renewable energy policies (Solorio & Morata, 2012). The Energy Union initiative, with its stronger focus on energy security, has also its roots in the gas supply crises of 2006 and 2009, as well as the tense relations with Russia following the annexation of Crimea in 2014 (Boersma & Goldthau, 2017). However, the deployment of the EEP has been all but an automatic process. The early history of this policy is particularly rich in examples of failed Commission proposals. For example, in the 1980s the Commission produced more than ten communications, including a proposal for the creation of a Community Energy Tax, which the Council largely ignored (cf. Schubert et al., 2016, p. 103). More recently, while the gas crises in the second half of the 2000s brought energy security to the top of the political agenda, the EU's involvement in securing gas supplies and energy diplomacy has been gradual and fraught with discussions over competence (see also section on horizontal integration).

The explanation for the gradual Europeanization of energy policy has mainly been found in *neo-functionalist* and *institutionalist* approaches, focusing on the role of supranational activism, the alliances with non-state actors, as well as institutional path-dependencies. The making of the internal energy market is the area that best exemplifies this point. For example, Andersen (2000) attributes the EU first directives on the liberalization of electricity and gas markets (1996 and 1998 respectively) to a process of political spillover. The 1986 Single European Act provided “new types of games on the EU level” that the Commission and like-minded actors could exploit. Similarly, Eikeland (2011) argues that the alliance between the Commission (in particular DG Competition), some like-minded Member States, industrial and consumer organizations explains the adoption of the Third Energy Package in 2009, including the obligation of unbundling, despite the explicit opposition of the European Council (see also Batzella, 2018, p. 69ff). The process of relentless incrementalism is therefore described as one where the Commission “consistently and patiently advance[d] its policy agenda (think ‘unbundling’) in small but ‘path-dependent’ steps” (Eberlein, 2012). However, this has not implied direct vertical transfers of authority. Instead, the main strategy allowing to circumvent national opposition has been a horizontal delegation from state to independent regulators and private actors (Eckert & Eberlein, 2018; Jevnacker, 2015). The new regulation on the internal market for electricity provisionally adopted in January 2019 follows on this *depoliticizing* path, by strengthening the role of ACER, increasing the responsibilities of ENTSO-E in the operation of cross-border grids, and proposing the establishment of yet another European entity gathering the Distribution System Operators (EU DSO) (Council of the EU, 2019).

The (relative) success of policy entrepreneurship by the Commission and like-minded actors is also related to a skillful use of *policy frames* justifying EU-level action and their exploitation in moments of crisis. For example, the gas crises of 2006 and 2009 were used by the Commission and Parliament to “construct” energy security as a European problem, to be dealt with the acceleration of the internal energy market and stronger involvement of the EU in diversification efforts (Herranz-Surrallés, 2016b; Maltby, 2013). Rhetorical action has also been used by Member States, particularly from Central and Eastern Europe, to demand greater diversification away from Russian gas. For example, normative considerations, such as

solidarity and loyalty, were consistently used to demand a concerted stance against further gas infrastructure from Russia via the proposed Nord Stream 2 (Herranz-Surrallés, 2018, pp. 206–207). Another example is energy efficiency, where the persistent attempts of the Commission to frame and reframe the issue in terms of competitiveness, sustainability and security, have been considered a key factor to explain why despite the high concern with subsidiarity and costs, this area finally made it into a main pillar of the Energy Union (Dupont, 2018). Similarly, the adoption of ambitious reforms in the EU ETS system leading to the introduction of a Market Stability Reserve in 2015 have been attributed to successful framing strategies by Non-State Actors (Fitch-Roy, Fairbrass, & Benson, 2019). Interestingly, contrary to the internal market account, where success of gradual liberalization is attributed to a depoliticization strategy by delegating powers to regulators and private actors, vertical integration in other areas such as energy security and sustainability has been facilitated by some actors' efforts to *politicize* energy matters.

Finally, the adoption of the Energy Union has revived the debate on how to characterize the *forms of governance* in this policy domain. The overall slow pace of integration and enduring national authority in several key aspects of energy policy has led scholars to consider EEP as an example of *new intergovernmentalism* (Thaler, 2016). Some characteristics that fit this label well are the growing activism of the European Council and an accommodating Commission, which particularly during Barroso's second mandate, was seen as lacking ambition in pushing for the 2030 Energy and Climate Framework (Bürgin, 2015). In a context of economic crisis, Member States were reluctant to go beyond mere coordination in renewable energy policies, and some blamed previous integration for rising energy costs (Jorgens & Solorio, 2018). However, by the end of the Juncker's Commission term, the picture looks somewhat different, with the successful adoption of the crucial eight pieces of legislation proposed in the 2016 *Clean Energy for All Europeans* package, including the much-awaited Energy Union Governance Regulation. According to some authors, the new policy-making structure introduced by the Governance Regulation (see section "Cross-Sectoral Integration") represents a new mode of "enhanced soft governance" (Knodt, 2019) or at least a form of "embedded intergovernmentalism" (Bocquillon & Maltby, 2018).

## Cross-Sectoral Integration: Escaping the Energy Trilemma?

The notion of "energy trilemma" has been used by the World Energy Council (WEC) to refer to the challenge of providing energy in a secure, affordable and environmentally sustainable manner. Each of these dimensions is a challenge on its own, and managing the trade-offs between them is often a predicament. In the *WEC Energy Trilemma Index*, only eight countries in the world (among them six EU Member States) present a good performance level in all three dimensions. All other countries struggle with one or more dimensions (see Table 3 for all EU Member States). At the EU level, the management of the trilemma has been even more challenging, given that action on the three different dimensions developed in a fragmented manner, at a different pace and through different governance structures, thus multiplying the chances of inconsistency. Energy policy has therefore been described as a "hybrid of coexisting elements" (Thaler, 2016) or more critically, as an "energy mess" (Helm, 2014). One of the main goals of the Energy Union was to overcome this fragmentation and silos mentality. Although the original idea for an Energy Union proposed by Donald Tusk (still in his position as Polish Prime Minister) focused on strengthening the security of supply

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dimension of the EEP, the initiative eventually turned into an overarching concept for integrating all strands of energy policy under a single institutional framework and policy process. The holistic approach of the Energy Union was supposed to bridge at least three gaps or sources of inconsistency: (1) the contradictions between energy policy *subsectors*; (2) the *ambition* gap when setting the goals; and (3) the discrepancy between the set goals and actual *delivery*. These three dimensions are presented in turn.

**Table 3. The Energy Trilemma Index in EU Member States**

| <b>Balanced<br/>Top<br/>Score</b> | <b>Low Score in One Dimension</b> |                      |                 | <b>Low Scores in Two Dimensions</b>      |                                     |                                      |
|-----------------------------------|-----------------------------------|----------------------|-----------------|--|-------------------------------------|--------------------------------------|
|                                   | <b>sustainability</b>             | <b>affordability</b> | <b>security</b> | <b>affordability/<br/>sustainability</b> | <b>security/<br/>sustainability</b> | <b>insecurity/<br/>affordability</b> |
| <b>Denmark</b>                    | Netherlands                       | Romania              | Ireland         | Latvia                                   | Belgium                             | Greece                               |
| <b>Sweden</b>                     | Slovenia                          |                      | Portugal        | Hungary                                  | Slovakia                            |                                      |
| <b>UK</b>                         | Germany                           |                      |                 | Estonia                                  | Lithuania                           |                                      |
| <b>France</b>                     | Austria                           |                      |                 |  |                                     |                                      |
| <b>Spain</b>                      | Finland                           |                      |                 |  |                                     |                                      |
| <b>Italy</b>                      | Czech R.                          |                      |                 |  |                                     |                                      |

Source: Author's own elaboration from World Energy Council (2018).

Regarding the *tension between subsectors* of energy policy activity, the *Clean Energy for All Europeans* package targeted two old but growing concerns. The first is the diversity of *support schemes for renewable energy* across Member States, something that the Commission has tried (and failed) to prevent since the adoption of the first Renewable Energy Directive (RES-E) in 2001. The model favored by the Commission was the so-called Tradable Green Certificates (TGCs), a modality more compatible with cross-border circulation of green electricity than Fit-in-Premiums (FIPs), although the latter are considered more effective in promoting RES (Lauber & Schenner, 2011; Nilsson, 2011). The rapidly increasing share of RES in electricity generation and plans to make the greening of electricity the centerpiece of the EU energy transition made this topic a priority again in the context of the Energy Union. The proposed new RES Directive (RED II) did not tackle the highly sensitive issue of harmonization of RES support, but initially included a new Article 5 introducing a “mandatory opening of national support schemes to RES installations located in other Member States” on a gradual basis (Hancher & Winters, 2017). This was not a minor change, considering Member States’ resistance to subsidize energy produced in other countries (Buchan & Keay, 2015, p. 54). The final agreement published in July 2018 contained a much watered-down Article 5, with only indicative targets for opening of support schemes, and the possibility of introducing mandatory targets to be assessed only by 2023 (Council of the EU, 2018a, p. 71). Interestingly, however, the Commission finally decided to tackle the harmonization of support schemes under its state aid competence, proscribing FITs as permissible state aid and setting a transitional period to replace them by TGCs (Jörgens & Solorio, 2018). This shows that, despite the Energy Union framework, the Commission still has to resort to the pre-Lisbon strategy of tackling energy issues indirectly, using the strength of EU competence in other related domains.

The second hurdle was the uncoordinated adoption of *capacity mechanisms*, namely payments to investors in conventional plants to guarantee their production in case of shortfall of demand. The proliferation of capacity mechanisms has been justified upon security of supply concerns, since the growing share of renewable energy has made gas and coal-fired generators less profitable and, hence, less willing to remain operating to remedy situations of under-supply (Buchan & Keay, 2015, pp. 54ff). However, the Commission and environmental groups have long criticized these mechanisms as “hidden subsidies” to fossil-fuel industries, something that “distorts competition, risks jeopardizing decarbonization objectives and pushes up the price for security of supply” (European Commission, 2016a, p. 2; see also Greenpeace, 2018). The new electricity market design brought about two landmark changes in that respect. The first was the opening of capacity mechanisms to providers located in other Member States, although this might still require the adoption of complex technical rules and propping up trust among Member States (Hancher & Winters, 2017). The second was the agreement to phase out capacity mechanisms for highly polluting power plants as of 2025, thus effectively banning state aid for coal. However, differentiation was introduced via a “grandfather clause” that largely exempts Poland from this provision, since contracts approved before December 2019 will continue benefiting from the established capacity scheme (Simon, 2018a).

Regarding the *ambition gap*, the legislative package of the Energy Union also sought to redress the 2014 decision of Member States to slow down the pace of the energy transition with the adoption of more modest goals for 2030 (see Table 4) and to replace binding national

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targets by EU-level ones. The removal of national targets was one of the main drivers for adopting a new Energy Union Governance Regulation, a new planning, reporting and monitoring tool to make sure that Member States undertake the necessary measures in place to reach the EU overall target (Regulation 2018/1999). The main instrument for assessing Member States' ambition is their obligation to draft integrated National Energy and Climate Plans (INECP) covering each of the five dimensions of the Energy Union, with both short-term (10 years) and long-term (50 years) planning. Following the model of the European Semester cycle of economic and social policy coordination, the Governance Regulation envisages the possibility for the Commission to issue recommendations on the national plans. Moreover, should the Commission find the goals insufficient for meeting the EU binding renewable target, the Regulation also envisages a mechanism to determine the allocation of missing percentage points to the Member States, which according to some, might amount to "introducing binding national targets through the backdoor" (Knodt, 2019, p. 187).

Still on the ambition gap, one of the most controversial issues during the negotiations of the Regulation was whether Member States should be allowed some flexibility in meeting their indicative targets, or whether there should be interim targets following a linear trajectory. This issue was particularly divisive in the European Parliament, where the first committee report on the Energy Union Governance was adopted by 61 votes in favor, 46 against and 9 abstentions (Euractiv, 2017). The final compromise was to set interim targets in 2022, 2025 and 2027. The negotiations were also used as an opportunity to raise the ambition of the EU 2030 Framework (see Table 4), although falling short of the European Parliament's proposal. However, the Parliament managed to include the possibility to revise the EU goals (only upwards) every 5 years in line with the Paris Agreement provisions. The Governance Regulation can therefore be understood as a "dynamic governance tool" (Ringel & Knodt, 2018, p. 213).

**Table 4. Evolution of EU Energy and Climate Goals**

|  | <b>2020 Goals<br/>(Adopted in<br/>2008)</b> | <b>2030 Goals<br/>(Adopted in<br/>2014)</b> | <b>2030 Goals<br/>(Revised in<br/>2018)</b> | <b>2050 Goals<br/>(Proposed<br/>2018)</b>       |
|--|---|---|---|---|
| <b><i>CO<sub>2</sub><br/>emissions<br/>reduction</i></b> | 20 %<br>(binding<br>EU&MS)                  | 40 %<br>(binding<br>EU&MS)                  | 45 %<br>(binding<br>EU&MS)                  | Net-zero<br>emissions<br>(non-binding)          |
| <b><i>Share of<br/>renewables</i></b>                    | 20 %<br>(binding<br>EU&MS)                  | 27 %<br>(binding EU)                        | 32 %<br>(binding EU)                        | ~60 %<br>(non-binding)                          |
| <b><i>Energy<br/>efficiency<br/>increase</i></b>         | 20 %<br>(non-binding)                       | 27 %<br>(non-binding)                       | 32.5 %<br>(non-binding)                     | ~50 %<br>(compared to<br>2005)<br>(non-binding) |

Source: Author's own elaboration from 2020, 2030 and 2050 EU Energy and Climate strategies.

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Finally, the Energy Union Governance Regulation introduced a new procedure for monitoring Member States' implementation of their iNEPCs, and hence prevent the so-called *delivery gap*. Based on biennial progress reports by Member States, the Commission was given the power to issue public recommendations. Contrary to what the Commission proposed, these recommendations are not binding. However, Member States are required to take "due account" of them and propose additional measures to redress the deviation in the ensuing progress report. The Commission can also request Member States that deviate from their trajectory to contribute to a "renewable energy financing mechanism," to fund renewable energy projects across the EU. Yet again, despite the initial proposal to make these contributions obligatory, hence equating them to sanctions, the final wording was watered down to make this contribution a voluntary option. However, the Governance Regulation gives the Commission a central role in the functioning of this mechanism via delegated acts.

The "quasi obligatory" recommendations and use of "delegated acts" has been considered by some analysts as contrary to EU law, arguing that these constitute essential provisions on the design of energy and climate policy, which should be passed by the usual legislative process or by unanimous decision in the Council in case of matters affecting Member States' sovereignty, as for example issues touching on RES targets (Menner & Reichert, 2017). This is also what leads Knodt (2019) to conclude that the Governance Regulation "could be described as soft governance with clearly harder elements of hierarchical steering by an actor that is not legally delegated to wield this kind of authority" (p. 181). Similarly, it could be said that the Energy Governance Regulation concedes a more autonomous role to the Commission compared to the European Semester, where the Commission's recommendations need to be endorsed by the European Council (Gawlikowska-Fyk, 2018). Against this view, other observers place the emphasis on the voluntary nature of the new process, noting that "soft governance underpins the framework making it vulnerable to free-riding and a domino effect of inaction and/or temptation for opportunistic behavior" (Popkostova, 2018). In sum, the degree to which there can be a joined-up approach will hinge on whether the newly established procedures are conferred with enough authority in practice (cf. Oberthür, 2019).

## Horizontal Integration: A Wider-European Energy Space?

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The gradual increase in vertical and cross-sectoral integration of European energy policy has also propelled its stronger external dimension. Particularly since the second energy package adopted in 2003, and coinciding with the final stages of the Eastern enlargement and the launch of a new policy towards neighboring countries, the EU set the vision for a "wider European energy market" (European Commission, 2003). This idea of an "active creation of a real integrated market, free of any barriers" (ibid.) encompassed all countries in the EU Eastern and Southern proximity, including Russia. These high ambitions reflect the zeitgeist of the 1990s, with the spread of liberal economic ideas and strong belief in the EU's wider regional gravitational pull. These hopes were soon dashed by the inauguration of a long period of high energy prices since 2004 and comeback of sovereigntist ideas related to energy. With the gradual worsening of geopolitical climate in EU-Russia relations and eruption of several conflicts in both Eastern and Southern neighborhoods, the EU's own external energy policy agenda has also gradually moved away from this market-regulatory agenda, towards what has been variously characterized as a geopolitical approach (Siddi, 2017), interventionist

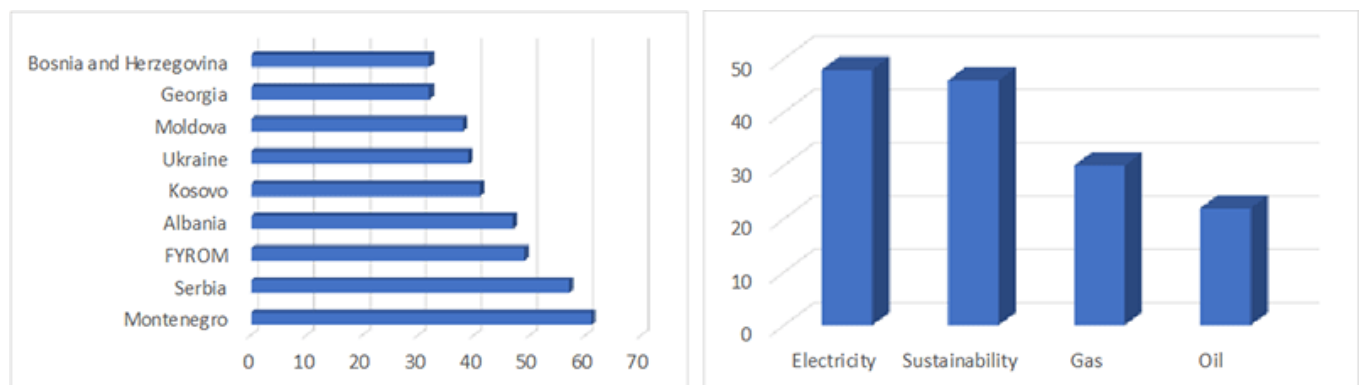


policies (Talus, 2015), instruments of energy diplomacy (Herranz-Surrallés, 2016b) or a “catalytic state” energy model (Prontera, 2019). Still, the geographical reach of the EU energy acquis has been (or might soon be) in flux through several dynamics: (1) the gradual expansion of the Energy Community; (2) the debate on the external application of EU law to pipelines from/to the EU; and (3) the modalities of energy cooperation post-Brexit.

The *Energy Community* (EnC) has gone a long way since its formal establishment in 2005. Designed initially for the preparation of candidate countries in the adoption of the energy acquis ahead of their accession, the Energy Community started welcoming also neighboring countries: Ukraine and Moldova in 2010 and Georgia in 2017. The EnC is unprecedented in that it is, in the words of its Deputy Director, “the first multilateral agreement where both law and institutions are extended in one sector only” (Buschle, 2014, p. xviii). Through membership in the EnC, the nine non-EU contracting parties committed themselves to adopting the EU energy acquis—about 30 EU core directives and regulations in force covering all the spectrum of energy-related sectors (Energy Community Secretariat, 2018, pp. 18–20). This process of harmonization with the EU takes place through a highly institutionalized set-up which resembles the EU institutional framework and decision-making, with a Ministerial Council, a Permanent High Level Group and a Parliamentary Plenum. Like the EU, the EnC has also its own regulatory body, the Energy Community Regulatory Board (ECRB), composed of national regulators. A significant development from the perspective of differentiated integration is that, for the first time in 2018, a regulator of a contracting party (Montenegro) acquired an observer status in ACER. Similarly, the EnC contracting parties are in the process of setting their 2030 climate and energy goals and developing a reporting and monitoring process through national plans, emulating the Energy Union governance process (Energy Community Secretariat, 2018). However, a crucial difference with the EU is the absence of a judicial body to enforce adopted decisions and ensure legal consistency in implementation across countries. This represents a clear limit to the idea of full integration in the Single Energy Market.

Another limitation is the implementation gap. The actual level of integration of contracting parties, measured in terms of transposition and implementation of the energy acquis, remains rather low, with an average implementation score of 43 % in 2018 (Energy Community Secretariat, 2018, p. 6). As shown in Figure 1, there are marked differences in implementation across countries and sectors. Data also illustrate that implementation continues to be challenging even for the closest circle of countries that have a clear membership perspective and have been EnC contracting parties from the outset. Although the oil sector appears at the back of the pack in terms of implementation, legislation in this sector concerns only obligations to maintain emergency stocks. Most significant is the low implementation of the third energy package in the gas sector, which is a key aspect for the EnC’s motto of contributing to a “Pan-European energy market.”<sup>1</sup> The EnC Secretariat recognizes that the contracting parties are not ready for the next generation of reforms focused on decarbonization, climate change and re-regulation, since most are still struggling with the “first transition” aimed at market opening and regional integration (Energy Community Secretariat, 2018, p. 7). Studies on energy reforms in EnC countries have highlighted lack of incentives in view of high short-term economic and social costs (Karova, 2009; Kuhlmann, 2014, pp. 150–151) but also political costs, particularly in countries where energy business has generated large rents for ruling elites (Wolczuk, 2016). The determination of Eastern

neighbors to enter the EnC has been rather explained by the interest of those countries in showing membership ambitions as well as a strategy for limiting Russia's influence over their energy sectors (Herranz-Surrallés, 2016c; Prange-Gstöhl, 2009).



**Figure 1.** Energy Community average implementation rates per country and sector.

Source: Author's own calculation from Energy Community (2018).

Turning to the *application of EU law in external cross-border infrastructure*, this has become another crucial bone of contention in external energy policy, as exposed by the Nord Stream 2 case. The controversy over the proposed gas pipeline between Russia and Germany catalyzes wider debates on the desirability to couple energy business with (geo)political considerations (Goldthau & Sitter, 2018). The project pitted mostly Central and Eastern European countries, rallying against the pipeline on grounds of security and strategic concerns, against Germany and some other milder supporters, such as Austria or the Netherlands, focusing on commercial considerations. The legal dimension of this discussion relates to the application of the rules of the third gas directive to pipelines from/to third countries. On the one hand, the Nord Stream 2 detractors, including the Commission, joined forces in arguing that all external pipelines should comply with rules such as third party access, unbundling and tariff regulation, unless the Commission would decide that the pipeline qualifies for an exemption following Article 36 of the gas directive. On the other hand, Russia and several EU Member States and the participating companies criticized this idea, considering it an unlawful extraterritorial application of EU rules. The legal services of the Council and Commission intervened in the discussion, concluding that the third gas directive does not explicitly set out provisions in relation to pipelines to and from third countries (Yafimava, 2017). In view of this, in November 2017 the Commission proposed to amend the third gas directive to introduce common rules for gas pipelines entering the EU internal gas market.

After tough negotiations, animated by U.S. diplomatic efforts and threats to impose sanctions to block the pipeline, the final amendment was adopted in May 2019 (Directive 2019/692). By seeking to strike a difficult compromise, the amendment reaffirmed the parallel authority of both Member States and Commission: on the one hand, it authorizes the Member State being the first entry point of the pipeline to grant derogations from the third gas directive taking into account competition and security of supply reasons (meaning a less stringent procedure than exemptions under Article 36 of the directive); on the other, it establishes that in case the Commission would disagree with the assessment of the concerned Member State, the former would prevail, hence acknowledging the EU competence in external energy infrastructure.

However, the political consequences of a disagreement between a Member State and the Commission on a project of the significance of Nord Stream 2 would open such a major political rift, that the viability of a negative opinion by the Commission can be put into question. Still, this amendment could strengthen the Commission's case for receiving a mandate to negotiate a legal framework with Russia (or other third countries in future pipelines) to avoid the clash of legal orders on both ends of the pipeline. In that case, it would mean a further example of horizontal integration, as the internal gas market rules would need to be observed by third countries seeking direct exports to the EU.

Finally, the horizontal integration of EU energy policy is also likely to be impacted by *Brexit*. As "hard Brexit" and even "no deal" scenarios catch on, the future modalities of EU-UK energy relations become more uncertain. While the preference of the industry and regulatory actors in the UK has been to remain in the Internal Energy Market (see e.g., Energy UK, 2018), this option hinges on the general terms of the future relations with the UK after withdrawal. The draft Council guidelines for the future relationship between the EU and the UK (Council of the EU, 2018b) suggest that a new framework will be needed to facilitate cooperation in the energy sector. Some of the ideas for such a new framework include the possibility of the UK remaining full member of the EU regulatory bodies such as ACER, ENTSO-E and ENTSO-G, continued participation of the UK in the EU ETS system, or the creation of a Joint Ministerial Council on Energy Policy, which could include also Norway and Switzerland as part of an "Enlarged Energy Union process" (E3G, 2018, p. 6). In case of exit of the UK from the Single Energy Market, most proposals also insist on the desirability to maintain the "integrated Single Electricity Market" on the island of Ireland, even in the case of no deal (Hinson & Priestley, 2018, pp. 20–23). Should some of these options become viable, that would entail adding new modalities of flexible horizontal integration untested so far.

## Conclusion

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The Energy Union initiative was launched with great expectations. The European Commission Vice-president for the Energy Union referred to it as "undoubtedly the most ambitious European energy project since the European Coal and Steel Community, some 60 years ago" and one that "has the potential to boost Europe integration the way Coal and Steel did in the 1950s" (Šefčovič, 2015). Similarly, Commission President Juncker celebrated the Clean Energy for All Europeans package saying that "we are adding a fifth freedom—the free movement of energy in Europe . . . these are epoch-making decisions" (European Commission, 2016b). With a total of 46 legislative proposals expected to be adopted until mid-2019, energy policy has indeed been one of the most dynamic sectors during Juncker's Commission. Although unevenly across policy sub-sectors, the Energy Union has meant an increase in EU authority or at least tighter coordination of national intervention. However, in some cases, such as external energy policy or the Governance Regulation, the jury is still out, since the proposed legislation perpetuates a situation of parallel EU and Member State authority, which might defer rather than solve potential inter-institutional conflicts (cf. Herranz-Surrallés et al., 2018).

However, a great deal of flexibility and differentiated integration remains. At the *vertical* level, even without formal treaty opt-outs, differentiation is a matter of fact in secondary legislation via exemptions, tailor-made derogations and discretionary aspects in the transposition and

implementation of EU directives (Andersen & Sitter, 2006). Some of the clearest examples of this so-called “micro-differentiation” (de Witte, 2017, p. 25) since the launch of the Energy Union are the exemption of Poland from the EU decision to phase out subsidies to coal-fired generators, or the possibility of derogations from the application of internal market rules in external infrastructure. On the *horizontal* dimension, differentiation is observed in the uneven implementation of the EU energy acquis by the countries of the Energy Community, and difficulties for maintaining legal consistency in absence of a judicial body that can interpret EnC decisions. Conversely, in terms of *cross-sectoral* integration, although tensions between sub-sectors are somehow inherent to this policy domain, the Energy Union Governance Regulation means a significant step forward towards a more joined-up approach. Its contribution will certainly remain premised on Member States governments’ ambition and responsiveness to domestic and peer pressure, but by fostering transparency and stakeholder involvement in drafting national plans, the new governance structure can at least make the links between energy sub-sectors more apparent to the policy community and the wider public.

Overall, therefore, the method for dealing with heterogeneity in the EEP has been to introduce more flexibility through broad and non-binding arrangements rather than formal modes of differentiated integration. In that regard, the Energy Union has minimized exemptions for groups of Member States, as for example was proposed in the discussion of capacity mechanisms for countries with a lower GDP (Simon, 2018b), or the possibility of gas purchasing arrangements among groups of states (cf. Ahner, Glachant, & de Hauteclocque, 2010). In sum, in just one decade after the Lisbon Treaty, the long-held view that EEP is “less ‘European’ than most other policies” (Buchan & Keay, 2015, p. 2), might no longer hold. However, the new combination of soft and hard governance emerging in the area still make energy a somewhat “special case of Europeanization” of particular interest for European integration scholarship.

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## Notes

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1. See mission statement in the Energy Community website <<https://www.energy-community.org/>>.

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